



Virginia
Regulatory
Town Hall

Periodic Review and
Notice of Intended Regulatory Action
Agency Background Document

Agency Name:	Department (Board) of Juvenile Justice
VAC Chapter Number:	6 VAC 35 140
Regulation Title:	Standards for Juvenile Residential Facilities
Action Title:	Amend
Date:	12 0700

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to amend or repeal an existing regulation and is required to be submitted to the Registrar of Regulations as a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B).

Summary

Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.

This regulation establishes minimum standards for residential facilities in the Commonwealth's juvenile justice system, covering program operations, health care, personnel, and facility safety and physical environment. It also sets additional standards for secure custody facilities, boot camps, work camps, juvenile industries, and independent living programs.

Basis

Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.

The general authority of the Board of Juvenile Justice to promulgate regulations is found in Code of Virginia § 66-10 (6), which provides that the Board shall have the power and duty "To promulgate such regulations as may be necessary to carry out the provisions of this title and other laws of the Commonwealth administered by the Director or the Department."

The specific legal authority of the Board to promulgate regulations governing local juvenile residential facilities is Code of Virginia § 16.1-309.9.A., which directs that "The State Board of Juvenile Justice shall develop, promulgate and approve standards for the development, implementation and evaluation of the range of community-based programs, services and facilities authorized by this article."

Public Comment

Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was or will be formed for purposes of assisting in the periodic review or development of a proposal.

The Department has been involved in on-going conversations with the Commission on Youth and detention home administrators regarding issues related to the post-dispositional confinement of juveniles in local detention homes. The consensus is that, while legislation may be necessary to resolve certain issues, in most cases the identified issues should be addressed in regulations to be developed by the Department. Within the context of the Administrative Process Act, the Department plans to convene one or more advisory groups to systematically consider these issues and draft specific proposals to amend the regulation.

Effectiveness

Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.

The following goals were stated when this regulation was promulgated: 1. to protect the citizens of the Commonwealth by confining delinquent juveniles who pose a threat to the public safety;

2. to provide a safe and secure environment for confined juveniles in which treatment and rehabilitative programming can be delivered; and 3. to provide appropriate due process protections to confined juveniles.

The regulation appears to be effective in establishing operational standards for juvenile residential facilities. Detention homes, boot camps, correctional centers, group homes and other residential settings are essential to the safety of Virginia's citizens in that these facilities provide suitable places in which the courts may place juveniles who are delinquent or in need of supervision.

The regulation appears to be clearly written and easily understood by the regulated entities. On a monthly basis, the Department and Board of Juvenile Justice review reports of monitoring and auditing visits that measure compliance with these standards; in all of these reviews there are rarely disagreements as to the meaning of a particular regulatory requirement.

Alternatives

Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.

Code of Virginia § 16.1-309.9 mandates that the Board of Juvenile Justice establish regulations governing locally operated residential facilities. Removing this statutory mandate is one alternative, but this alternative would run counter to the action of the 2000 General Assembly, which directed the Department to develop additional standards governing post-dispositional programs in juvenile detention homes (See 2000 Appropriations Act, item 476.A.3.: "The State Board of Juvenile Justice shall prescribe standards for the development, operation and evaluation of programs and services [for postsentencing alternatives for juvenile offenders eligible for commitment to the Department but who may require confinement less secure than a state juvenile correctional center].")

Another alternative, on which the Department has not made a final decision, is to adopt national standards, such as those of the American Correctional Association, as Virginia's own standards for juvenile residential facilities. It is not clear whether this alternative would be more or less burdensome on regulated facilities than the current state regulations, and the Department is continuing to look into this possible alternative.

Recommendation

Please state whether the agency is recommending the regulation be amended or terminated and the reasons such a recommendation is being made.

The Department recommends that the regulation be amended to include additional standards for post-dispositional programs as mandated by the General Assembly in the 2000 Appropriations Act and in Code of Virginia § 16.1-284.1.D: "Standards for these facilities shall require juveniles placed pursuant to this section for a period which exceeds thirty calendar days to be provided separate services for their rehabilitation, consistent with the intent of this section."

Substance

Please detail any changes that would be implemented.

Any changes to the regulation pertaining to post-dispositional detention would be proposed by work groups including representatives of detention homes and interested members of the public. The Department intends to convene such work groups early in calendar year 2001, and to continue their work at least through the 2001 Session of the General Assembly in order to consider any further legislative changes that might affect the mandated regulation.

The Department is also considering strengthening the requirements for background investigations of personnel (see 6 VAC 35-140-260) and is consulting with the Attorney General's as to appropriate options.

Family Impact Statement

Please provide a preliminary analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The anticipated amendments regarding post-dispositional detention should strengthen the institution of the family. At the heart of the statutory provision for locally-operated post-dispositional detention programs is the notion that in some cases, juveniles who would otherwise be committed to the state can be better treated in or near their own communities, close to their families and other support systems.